

Submission of electronic data on pawn transactions to law enforcement

SB 757 by Armbrister (Solomons)

DIGEST:

SB 757 would have required pawnbrokers who generated computerized pawn and purchase tickets to transmit electronically data about the transaction to either a law enforcement agency or a third-party provider. The data transmitted to law enforcement would have had to include the pawnshop name and address, transaction date, item description, and pawn ticket identification number, while the data transmitted to the third-party provider would have had to include all transaction data, including identifying customer information. SB 757 also would have allowed a county sheriff or city police chief to place a hold order on goods held by a pawnbroker if the officer reasonably suspected that the goods had been stolen or otherwise misappropriated. The pawnbroker would have had to retain the goods until the order expired, was released, or was overturned by a court order.

GOVERNOR'S REASON FOR VETO:

“Senate Bill No. 757 is fundamentally the same as House Bill No. 1839 from the Seventy-Eighth Legislative Session which I vetoed. The bill would reduce local control by mandating the use of private third-party providers in gathering information about pawnbroker transactions. The bill also would limit the type and extent of pawn transaction information available to local law enforcement.

“For example, the bill would require pawn transaction information to be submitted electronically if the pawnbroker generates computerized tickets. According to information collected by the Office of Consumer Credit Commissioner, approximately 90 percent of the pawn shops in Texas produce computerized tickets; therefore all of the pawn transaction information would be submitted electronically. Under the bill, local law enforcement would receive restricted transaction information, while a third-party provider would receive all transaction information. In order to continue receiving all transaction data, as they now do, law enforcement would have to purchase the information from a third-party provider.

“With this veto message, I hope to discourage legislators from further attempts to reduce law enforcement’s access to pawn transaction information.”

RESPONSE:

Sen. Ken Armbrister, the bill’s author, said: “When a bill passes two sessions in a row on local calendars, yet it is vetoed twice, it bears looking into. There was no opposition expressed in committee and we had made changes to address any concerns about the previous legislation. We were very surprised by the veto.”

Rep. Burt Solomons, the bill’s sponsor, said: “I am disappointed, and somewhat surprised, that Gov. Perry has once again chosen to veto a bill that is designed to help law enforcement investigate property crimes while at the same time protecting the privacy

rights of customers. During the session, I had very positive discussions with his office concerning the subject matter of this bill. However, it seems that the governor is more concerned with doing favors for a few police chiefs than helping police officers solve property crimes while still protecting privacy rights.

“Currently, pawnshops are required by law to allow peace officers to manually review the paper copies of all pawnshop transactions. This is a very expensive and time consuming exercise for the officers and department personnel. While the governor is correct about the percentage of pawnshops who produce computerized pawn tickets, pawnshops are not required by law to submit the transaction data electronically. If a police department is receiving pawnshop data electronically it is the result of an agreement between the parties. Pawnshops want to assist law enforcement in solving property crimes. However, they are uncomfortable in giving private information of their customers who are not under investigation in a format that is easy to nefariously manipulate. As discussed in committee hearings, only 1 percent of property received by pawnshops is stolen. Thus, 99 percent of the property received by pawnshops is from law abiding citizens. SB 757 represented a fair and balanced approach to helping police departments investigate property crimes in our electronic age while protecting the privacy rights of the many innocent pawnshop customers in this state.

“In his veto proclamation, the governor stated that SB 757 is ‘fundamentally the same as House Bill No. 1839 from the Seventy-Eighth Legislative Session which I vetoed.’ That is not correct. SB 757 contained four new provisions that were requested by the police chiefs’ association including: (1) ticket identification numbers on reportable data; (2) verbal hold orders extended to 10 days from seven days; (3) allowing offenders to be prosecuted under other appropriate penal statutes, if applicable; and (4) protecting current seizure law with respect to misappropriated contraband. Again, Sen. Armbrister and I made every attempt to address the police chiefs’ concerns regarding this bill except for one issue.

“That issue, which remains the same in both bills and is the basis of the police chiefs’ opposition, prevents police officers from racially profiling pawnshop customers. The police chiefs made numerous requests to remove this provision. Sen. Armbrister, a former police officer, and I, a former city attorney and municipal court judge, both agree that law enforcement officials should not be able to profile suspected offenders, or anyone else for that matter, based on their race, age, or location of residence. SB 757 clearly reflects this position. However, it seems clear by the veto of this bill that the police chiefs were able to convince the governor that there is an inherent value in being able to racially profile pawnshop customers in the name of investigating property crimes.

“Further, the governor stated that SB 757 ‘would reduce local control by mandating the use of private third-party providers in gathering information about pawnbroker transactions.’ The plain language of the bill provides otherwise. Pawnbrokers transmit data electronically to a third-party provider only if the police department chooses this option (see Section 371.352).

“The bill provides four means of providing data to a police department in an electronic format. First, the pawnbroker can use a third-party provider, if the police department chooses this option. Second, the pawnbroker can transfer a subset of the data to the police department directly, if the police department chooses this option. Third, the pawnbroker may agree to transfer the complete data to the police department. Finally, the pawnbroker and police department may agree on any other means of sharing information. This is hardly a reduction in local control.

“Moreover, it is extremely disingenuous for the police chiefs to complain to the Legislature about being mandated to use a private third party when four of the six major cities in the state currently use a private third-party database. In fact, nearly 170 police departments and 4,000 pawnshops are registered with the same third-party database. On the database company’s website, there are testimonials by police officers, from the same cities that opposed SB 757, lauding the ease and effectiveness of the private third-party service. All of this information was communicated to the governor’s office but apparently to no avail.

“The governor states that the bill ‘limit[s] the type and extent of pawn transaction information available to local law enforcement.’ Again, the plain language of the bill suggests otherwise. In order to balance the privacy rights of innocent customers with the need to improve law enforcement’s ability to investigate property crimes, the bill limits the information available to a police officer unless the officer suspects an item to be stolen (see Section 371.355). It is not unreasonable to ask that a police officer have suspicion that an item is stolen before providing that officer with the private information about an individual.

“SB 757 would have made the jobs of law enforcement significantly easier by providing police officers with access to electronic data, instead of the paper copies used today. More importantly, it would have established a uniform method of transferring electric pawnshop data with necessary consumer protections. However, it apparently did not provide access to enough data to allow law enforcement officials to racially profile pawnshop customers suspected of misappropriating property. Thus, the police chiefs’ association has decided that the current, inefficient paper process is better than the fair and balanced approach SB 757 takes.

“In short, because the police chiefs association decided it must have fully searchable access to the private customer information of the more than 99 percent of pawn transactions that do not involve stolen goods, the governor has once again vetoed the best and most balanced bill the Legislature could pass to assist law enforcement officials’ investigations of property crimes in this era of electronic access to data.”

NOTES:

SB 757 passed the House on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.